IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.10.2007

CORAM:

THE HONOURABLE MR.JUSTICE K.RAVIRAJA PANDIAN
and
THE HONOURABLE MRS.JUSTICE CHITRA VENKATARAMAN

T.C. (Appeal) No.1407 of 2007

M/s.Sundaram Finance Limited
21, Patullos Road
Chennai-600 002. .. Appellant (Respondent)

versus

The Deputy Commissioner of Income Tax/
The Joint Commissioner of Income Tax
Special Range-II
Chennai-600 034. .. Respondent (Appellant)

PRAYER: Tax Case Appeal filed under Section 260-A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Madras "B" Bench, Chennai, dated 30.9.2005 in ITA No.138/Mds/1999 for the Assessment year 1995-1996 against the order of the Commissioner of Income Tax (Appeals) IX, Chennai dated 30.10.1998 and made in IT/WT/GTA/Appeal.No.132/97-98 against the order of the Deputy Commissioner of Income Tax, Special Range-II, Chennai dated 27.01.1998 and made in PAN.GIR.No.AAACS.4944A/GI.No.9-S for the Assessment Year 1995-1996.

For appellant : Mr.Venkatanarayanan
for M/s.Subbaraya Iyer and
Padmanabhan & Ramammani
For respondent : Mr.J.Narayanasamy
Standing Counsel for Income Tax

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JUDGMENT

(Judgment of the Court was delivered by K.RAVIRAJA PANDIAN,J.)

The substantial question of law formulated for entertaining the appeal is as follows:

" Whether on the facts and in the circumstances of the case the Tribunal was right in treating the amount of Rs.49,83,021/- collected as contingent deposit as income of the appellant? "

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2. The facts of the case are as follows:

The appellant is a non-banking company. The relevant assessment year 1995-96. The appellant filed a return of income admitting a total income of Rs.48,49,70,550/-. The return was accepted vide intimation under Section 143(1)(a) dated 20.3.1996. Subsequently, regular assessment under Section 143(3) was completed on 27.1.1998 determining the taxable income at Rs.53,71,17,630/-. While completing the assessment, the Assessing Officer has added the contingent deposit, among other items.

3. During the relevant assessment year, the appellant collected a sum of Rs.63,74,680/- from its customers as contingent deposit. The collection was in anticipation of the sales tax liability which was in dispute. Since there was a contingent liability fastened on the deposit, the appellant did not treat the amount as trading receipts. However, the Assessing Officer rejected the contentions of the appellant and brought to tax a sum of Rs.49,83,021/- after reducing Rs.13,91,839/- which was taxed earlier.

4. On appeal, the Commissioner of Income Tax (Appeals) allowed the appeal on the ground that the contingent deposit could not partake the character of a trading receipt liablility to be taxed in the relevant year. The Revenue carried the matter on appeal to the Income Tax Appellate Tribunal. The Tribunal held in favour of the Revenue and the Company has preferred this appeal by framing the above substantial question of law.

5. We heard the learned counsel for the appellant and perused the material on record.

6. Learned counsel appearing for the appellant fairly submits that the issue as to whether the collection of sales tax for keeping it in a contingent deposit and treating the same as deposit would amount to income of the assessee or not was the subject matter of consideration before this Court in the case of COMMISSIONER OF INCOME TAX Vs. SOUTHERN EXPLOSIVES COMPANY reported in (2000) 242 ITR 107, wherein, the Division Bench of this Court held that such a deposit would amount to revenue receipt. In order to come to the conclusion, the Division Bench has given the reason as follows:

> " The true character of a receipt must be judged with reference to the reasons for the collection, and the liability for meeting which the collection was made. When the liability is a statutory liability, which the assessee was required to meet and for meeting which it was by the statute or authorities permitted to collect the amount required from its customers, the true character of the collection is a trading receipt. By calling a portion of the amount deposit, it cannot be said that the assessee had constituted itself as a trustee, and therefore the amounts

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received were not required to be regarded as part of its trading receipt. "

7. While laying down the law like that, on the facts of the case, the Division Bench further held thus:

" The amounts collected by the assessee were amounts which were meant to be utilised by the assessee for meeting its tax liability. Even if the assessee had paid over the entire amount received by it as deposit towards sales tax to the State Government, it would still have been open to the assessee to seek refund if the assessee wished to claim such refund on the ground that the tax had been levied at a higher rate than the rate permissible. The fact that the assessee had chosen to adopt the device of labelling a part of the amounts collected towards its sales tax liability as deposit could not make a difference. The amount formed part of the assessee's income. "

8. The above decision has been rendered by the Division Bench of this Court after taking stock of almost all the earlier decisions on that issue. In view of the exposition of law laid down by this Court after taking note of all the Supreme Court judgments on this issue that the receipt of the amount for payment of sales tax and keeping it in deposit would amount to a revenue receipt, the appeal is dismissed and the question of law is answered in favour of the Revenue. No costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

ksv

To:

1. The Assistant Registrar,
Income-Tax Appellate Tribunal
Rajaji Bhavan, III Floor,
Besant Nagar, Chennai - 90.

2. The Deputy Commissioner of Income Tax/
The Joint Commissioner of Income Tax,
Special Range - II, Chennai - 34.

3. The Commissioner of Income Tax,
(Appeals) IX, Chennai.

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4. The Deputy Commissioner of Income Tax
Special Range-II, Chennai-600 034.

1 cc To Mr.Pushya Sitaraman, Standing Counsel for I.T.Cases, SR.65855.

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VC(CO)
RVL 07.11.2007

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